Visit to Norfolk Island of the Joint Standing Committee on the National Capital and External Territories in April 2010

Submission to the Committee by Robin Adams JP, former Clerk to the Legislative Assembly of Norfolk Island

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On the occasion of the visit to Norfolk Island of the Joint Standing Committee on the National Capital and External Territories
in April 2010

Submission to the Committee by Robin Adams JP, former Clerk to the Legislative Assembly of Norfolk Island

Parliamentary democracy

For a period of 26 years from June 1984 to 18 March 2010, I held the senior parliamentary position of Clerk to the Legislative Assembly of Norfolk Island under section 48 of the Legislative Assembly Act 1979. Prior to 1984 I was the Deputy Clerk and prior to that Registrar of Lands; Births, Deaths & Marriages; Clerk of the Court of Petty Sessions and Deputy Registrar of the Supreme Court of Norfolk Island.

At the date of my resignation on 18 March I was the longest serving Clerk of Parliament in the Australasian and Pacific Region and one of the longest serving Clerks of Parliament in the Commonwealth of Nations.

The purpose of this paper is to document Governance and Democracy – Norfolk Island style and to explore with the committee whether the Territories Law Reform Bill 2010 undermines our style of democracy. I believe it does. The question is how do we, once and for all, address this ongoing impasse and arrive at a place where there is balance and harmony between the Commonwealth of Australia and the Territory of Norfolk Island so that all parties are on the same platform. What is the vehicle that will achieve this outcome?

Emeritus Professor Maev O'Collins, posed the following answer in her 2004 paper titled "Norfolk Island and the Commonwealth of Australia: Continuing the Uneasy Relationship?" presented in the Australian National University Emeritus Faculty Lecture Series –

> **"Á continuing challenge is to devise and maintain open processes of dialogue and consultation between the Parliament of Australia and the Norfolk Island Legislative Assembly. Ensuring that the Norfolk Island community is directly engaged in the process may also serve to establish a sense of ownership and responsibility. If the process of implementation included a two-way mechanism for ongoing consultation, aimed at achieving acceptance and endorsement, as well as any mutually acceptable modifications, both Norfolk Island and Australia would be the winners."**

Documentation to which I have been privy over the years as the Clerk clearly demonstrates that the Norfolk Island parliament stands ready to engage co-operatively with the Commonwealth to achieve the greatest possible degree of transparency and accountability to the local community; and the public record will attest to that fact. Regrettably, the Territories Law Reform Bill 2010 does not, and cannot, be said to meet the criteria of "a two-way mechanism for ongoing consultation, aimed at achieving acceptance and endorsement..." by the Norfolk Island community. And with the greatest of respect that is most regrettable.

It is inherent in a parliamentary democracy that –

1) the people elect the parliament;
2) that parliament is the voice of the people; and
3) that through the vehicle of the parliament, in an ideal world, *government is of the people, by the people, for the people,*

and any action by any government that diminishes these basic tenets of democracy is fraught with danger.

An example of that danger was flagged by The Hon Paul Neville, Member for Hinkler, in his debate on the Norfolk Island (Amendment) Bill 2003 (House of Representatives Hansard 4 March 2004)

> **"...We have to be careful that we do not put layers of bureaucracy in place for an island of 3,000 people such that we destroy the very character of the place and the people. That would be a cultural tragedy of monumental proportions..."**

Does the Territories Law Reform Bill diminish the basic tenets of democracy?
There are several key changes proposed in the Bill which clearly diminish evolving trends and the basic tenets of democracy. These are:

1. The proposed ability 1) for the Commonwealth Minister to give directions in Schedule 2 matters; and 2) which allows the Administrator to reserve Schedule 2 matters for the Governor-General. Schedule 2 has up until now been sacrosanct in the evolution of self-government for Norfolk Island. The Bill as presently couched is a devolution of power that is inconsistent with the "promise" contained in the Preamble to the Norfolk Island Act of 1979.

2. By fixing the term of the Assembly to be no less than three years is a devolution by default of the community's existing right under the Referendum Act 1964 through a citizen initiated referendum to request the Administrator to dissolve the Assembly as was initiated in 2001. The proposal to fix the term is not in keeping with global trends to have the power of recall in the legislation. For example in the 1994 Canadian Study of Parliament Group report on "Accommodating Mechanisms of Direct Democracy in the Parliamentary System" it is recorded that 75% of Canadians support the recall of parliamentarians by the people. The Bill resides the power of recall with the Administrator and/or the Governor-General and away from the people where it should properly reside.

3. The requirement to give 14 days notice of a vote of no confidence in the Chief Minister. This provision perhaps has not been clearly thought through. Giving of notice is clearly provided for in the Standing Orders; the Notice Paper closes on the Thursday prior to a sitting on the following Wednesday; notices received prior to closing day are just held in a file until the Notice Paper is considered by the Business Committee on the Friday before the sitting. No-one sees the notice of motion until the Notice Paper is produced and therefore the 14 days requirement is purely academic and of no real meaning. This provision clearly demonstrates an intent to change how the Legislative Assembly does business.

4. The Commonwealth Parliamentary Association Executive Committee (London), in conjunction with the World Bank, have over the last two years been actively encouraging member branches of the CPA to measure their performance against Recommended Benchmarks for Democratic Legislatures. The Pacific Region has completed its Assessment and I was by invitation present in the preliminary discussions. The Legislative Assembly of Norfolk Island measures well against those benchmarks except in two key areas. Our failure to measure well against these two benchmarks is due to decisions taken by the Commonwealth Parliament and is outside of Norfolk Island's control. Those Benchmarks are –

   1.1.1Members of the popularly elected or only house shall be elected by direct universal and equal suffrage in a free and secret ballot

   (Our response) Members of the Legislative Assembly are elected by direct and equal suffrage in a free and secret ballot. There is however an issue about whether Assembly elections are "universal", because sections 39A and 39B of the Norfolk Island Act 1979 restrict the right to vote, and eligibility for election, to Australian Citizens. The Commonwealth of Australia inserted those sections in 2004, prior to which Norfolk Islanders who were not Australian citizens were entitled to enrolment on the electoral roll and eligible for election, subject to defined conditions.

1.2.1 Restrictions on candidate eligibility shall not be based on religion, gender, ethnicity, race or disability.
(Our response) There are no restrictions on candidate eligibility based on the grounds stated. However there are restrictions on candidate eligibility on other Article 26 grounds: see 1.1.1 above.

5. The Consultation draft is different to the tabled Bill and it is unfortunate that Norfolk Island was not consulted on those changes. You will of course be aware that the period of consultation of the Bill set up by Commonwealth officers was during the election period and that the Bill was actually tabled on the day of the Norfolk Island election.

There are other changes proposed in the Bill which are of concern but I am confident that these will have been addressed in the Norfolk Island Government submission to the Committee.

A snapshot of our political history may be useful in helping you have a better understanding of the ongoing tension arising from the equivocal nature of the island's status.

In 1856 the Pitcairn community moved en masse to Norfolk Island under Royal Instructions issued 24 June 1856 and it is important to record, and reflect on, those Instructions –

> "And whereas the inhabitants of the said Island are chiefly emigrants from Pitcairn's Island in the Pacific Ocean, who have been established in Norfolk Island under our authority, and who have been accustomed in the territory from which they have removed to govern themselves by laws and usages adapted to their own state of society, you are, as far as practicable....To preserve such laws and usages, and to adapt the authority vested in you by the said recited Order-in-Council to their preservation and maintenance."

In other words, the newly settled community was a self-governing people in the truest sense of the word and the Royal Instructions certainly honored a basic tenet of democracy – *government of the people, by the people, for the people.*

However, for whatever reasons this idyllic democracy was not to last as history records, and significant changes, including the loss of the Island's self-governing status, were to follow with key dates for change being 1896, 1908, 1913-14, 1935, 1948, 1957-60 and 1975-76 until once again, in 1979, with the establishment of a 9 member Legislative Assembly Norfolk Island again set off BACK down the road to self-government.

You will find detail on these significant dates in the articles written by me for The Parliamentarian back in 2008 under the title *"Norfolk Island's self-government under threat again"* and in 2006 under the title *"Democracy at Risk"*. **See Attachment 1.** The Parliamentarian is the international publication produced quarterly by the Commonwealth Parliamentary Association, of which the Commonwealth of Australia is a founding member nation. The Norfolk Island legislature is a member branch of the Association in its own right.

What was the intent of the Commonwealth Government in 1979?
It is important to again record the intent of the Commonwealth Parliament expressed in the Preamble to the Norfolk Island Act in 1979, and I quote in part -

> "AND WHEREAS the residents of Norfolk Island include descendants of the settlers from Pitcairn Island:
>
> AND WHEREAS the Parliament recognises the special relationship of the said descendants with Norfolk Island and their desire to preserve their traditions and culture:
>
> AND WHEREAS the Parliament considers it to be desirable and to be the wish of the people of Norfolk Island that Norfolk Island achieve, over a period of time, internal self-government as a Territory under the authority of the Commonwealth and, to that end, to provide, among other things, for the establishment of a representative Legislative Assembly and of other separate political and administrative institutions on Norfolk Island:"

The road forward in '79 was paved with trust, faith, respect and goodwill; and perhaps a degree of innocence and one could be forgiven for thinking that at last, the Norfolk Island community would return to its former self-governing status. However, history has a habit of repeating itself and time and again there have been well-meaning and unsolicited endeavors by the Commonwealth since 1979 to change our self-governing status. The years 2004, 2006, 2008 and today, 2010, with the introduction of the Territories Law Reform Bill into the Federal Parliament, against the wishes of the majority of the Norfolk Island people are testament to this fact.

Governance and democracy – Norfolk Island style – today – April 2010
Our Westminster model of government has been tailored to work for us – a small community of around 1800 people, with 1100 voters at last count, and a small parliament of only 9 members. This combination means that our hybrid model of representative government, which is a mix of Westminster, Consensus and Direct Democracy, can work. The Isle of Man and the Canadian Northwest Territories parliaments have a similar mix.

In fact the Isle of Man Branch of the CPA makes no apology for the statement in its CPA publication that –

> **"There is no parliamentary party system. A few Members belong to a political party but the majority are independent. As a result decision making is by consensus which promotes political stability".**

However, our system can, and does, create a conundrum for those who come from an adversarial party system of government as is used in Australia and New Zealand which in turn can cause newcomers to agitate to change our system to mirror what they left behind.

To understand why our system has evolved as it has one needs to appreciate the "Island way". Our survival on Pitcairn, and on our arrival on Norfolk down to the present day depends on our ability to work together in order to survive. That is our fact of life. Our isolation demands we work together and that ability to work together is mirrored in our parliament. We cannot afford to be adversarial in how we go about doing business. The Island parliament and how it works mirrors how the Island families solve their problems around the kitchen table; that is, by consensus.

One of my last acts as the Clerk was to draft a submission for consideration by the 13th Legislative Assembly of a set of Guiding Principles and Process Conventions modeled on the Canadian Northwest Territories parliament, which has consensus government; a system of government which Norfolk Island basically mirrors in its day to day operations.

See Attachment 2 for a copy of that draft.

Our system of governance today remains consistent with that envisaged for the Island by the Commonwealth Government in 1979 – and this was reinforced at the 25th anniversary celebrations of the Legislative Assembly by the Hon Bob Ellicott QC, the architect for self government in 1979, when he addressed the Assembly on 18 August 2004 and I quote in part .....

> ..."I thought it might be a moment to reflect on the basic principles of self Government to, as it were, go back to the beginning and set down what those basic tenets were because they are pretty important. At the very threshold was this proposition that under the Commonwealth Constitution the Commonwealth Parliament has Plenary power for the Government of this Territory and that means not only that it regards this Territory as part of Australia but it has not only the power but it has the responsibility of the welfare of Norfolk Island. ..... Something very important I wanted to mention is that you would notice that when self Government came you had proportional voting and the purpose of that was to underlie one fact and that was that this island *can only operate by consensus*. (emphasis is mine).....I say to you ... at the end of the day whoever sits around this table has to get to a decision by consensus and that was a basic platform of self Government...."

See Attachment 3 for the full text of his address.

In the lead up to the election on 17 March 2010 I published in the local paper two articles dated respectively 6 and 13 March under the heading of "Governance and Democracy – Norfolk Island Style"

See Attachments 4 and 5.

I encourage Members of the Committee to take time to read them as they will give you a good understanding of how we do business today, and in turn will assist you to appreciate how the Bill before your parliament will change the basic fabric of our Island democracy.

To conclude

In January 2009 the Norfolk Island Parliament hosted the annual meeting of ANZACATT – the Australian and New Zealand Association of Clerks at the Table. The biennial meeting of Australasian Clerks of Parliament preceded the meeting of ANZACATT. Norfolk Island submitted a paper at the Clerks' meeting titled "The Place of Traditional Leadership in Modern Legislatures".

In discussion arising out of our paper one of the Australasian Clerks acknowledged that the Norfolk Island Legislative Assembly, because of its smallness, and the comparative smallness of the population, could be viewed –

"as a perfect balance between the Pacific parliaments and the Australian Parliaments – almost a perfect democracy working as it was intended"

I fully support that view.

7 April 2010

6.

History in the Making

Norfolk Island's self-government under threat again

Mrs Robin Eleanor Adams, *in Kingston.*

The people of Norfolk Island, a tiny Australian external territory in the South Pacific, have a long history of surviving changes in their governance which have been imposed on them without consultation, and sometimes without warning. And it seems to be happening again, writes the Clerk of the island's Legislative Assembly.

Mrs Adams has been the Clerk to the Legislative Assembly of Norfolk Island since 1984.

In August 2009, the people of Norfolk Island are proudly making plans to celebrate 30 years of self-government. This is in spite of renewed moves by Australia to remove or limit some of the democratic freedoms that are cherished by this small island state.

2009 will be a time to pause and reflect on past achievements, and to plan for the future to ensure the very best outcome for future generations of Norfolk Islanders. With this in mind, the 12th Legislative Assembly at its June 2008 sitting moved the following as its Vision for the Legislative Assembly:

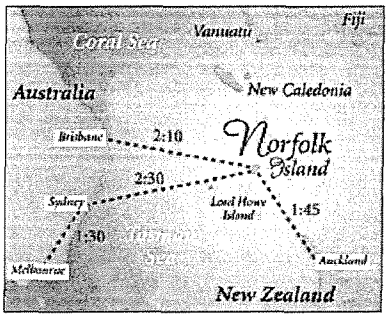
"Delivering quality services through sustainable governance so that the people of Norfolk Island might preserve their unique language, traditions and culture and continue to determine their own future."

At the time, the government and the people of the island were looking to the future with confidence and optimism, after the Australian federal government had abandoned its plans to impose governance changes in 2006. (See *The Parliamentarian* Issue Two/2006).

After an announcement in the Australian Parliament in October 2008, the Parliament of this island is once again forced to direct resources to defend its position and the right to govern its own people.

Throughout the history of the people of Norfolk Island, there has always been a tension arising from the equivocal nature of the island's status. In the past, the attitude of first the British, and then the Australian government has ranged from paternalistic to "laissez-faire". In more recent times, the fact that the island and its system of governance is something of an anomaly has led to Australian authorities espousing integration of the island into mainland political units, including taxation and welfare, immigration and customs. The Norfolk Islanders have consistently resisted this approach.

The following snapshot of our political history, although not comprehensive, illustrates that for the past 152 years, the question of the island's



status vis-à-vis Australia – and British colonial authorities in previous times – continues to be a live political issue up to the present day.

1789

After an initial period of violence, the Pitcairn Island descendants of the H.M.S. Bounty mutineers and their Tahitian wives live a peaceful and orderly self-governing existence on remote Pitcairn Island.

1883

Captain Elliott of H.M.S. Fly helps the community to draw up a simple code of laws, and a Chief Magistrate is elected each year from the local inhabitants. The Pitcairners lead the world in legislating for free and compulsory education and female suf-

The first sitting of the 11th Assembly in the Norfolk Island chamber.

frage. At this time, the people come under the British Crown.

1856
The community moves en masse to Norfolk Island. Under Royal Instructions issued June 24, 1856: *"And whereas the inhabitants of the said Island are chiefly emigrants from Pitcairn's Island in the Pacific Ocean, who have been established in Norfolk Island under our authority, and who have been accustomed in the territory from which they have removed to govern themselves by laws and usages adapted to their own state of society, you are, as far as practicable.... To preserve such laws and usages, and to adapt the authority vested in you by the said recited Order-in-Council to their preservation and maintenance."*

1857
Captain Dennison assists the Norfolk Island settlers to draw up 39 Laws and Regulations. The island remains substantially self-governing under its own locally elected Magistrates.

1896
Norfolk Island is brought under the government of New South Wales. All local laws are repealed and the local Magistrates are abolished and replaced by an outside appointee. Most Islanders first read about this change in the Sydney Morning Herald. Their protests are rejected, with one member of an investigating committee referring to "the pernicious doctrine of democracy!" Around this time, New Zealand expresses some interest in governing Norfolk Island.

1908
In the lead-up to the transfer of control of the Island from Britain to Australia, the occupants of the old penal settlement buildings, whose families have lived in them since their arrival in 1856, are asked to sign a paper to the effect that they only occupy these buildings under a special licence, and can claim no right of ownership. Most accept eviction rather than sign, because they are convinced of their rights.

1913-14
Britain transfers control of the island to the Commonwealth of Australia. As an external territory, it comes under an administrator whose role is combined with that of Chief Magistrate. At this time, the Minister who moved the Norfolk Island Bill in the Australian federal Parliament is asked if there has been consultation with the Norfolk Island people on the matter of the change in their constitutional status. His reply is: "They know what is going on: but no, they have not been consulted...."

At first there is an Executive Council, but with most Members being appointed by the administrator and only having power over minor municipal matters.

1926
A royal commission receives representation from 12 of the then 19 surviving original settlers from Pitcairn Island that the original promises made to the Pitcairners have not been honoured.

1935
An elected eight-Member Advisory Council is established. The roles of administrator and judiciary are made separate.

1948
The Australian Citizenship Act of 1948 includes the people of Norfolk Island. This is passed without their knowledge or consent, but has implications in their efforts to assert their distinct and separate rights in later years.

1955
A Petition signed by 375 of Norfolk Island's 583 adults is addressed to Her Majesty, asking for the restoration of "the democratic right of control over our domestic affairs".

1957-60
Under the Norfolk Island Act of 1957, more executive powers are to be given to a Norfolk Island Council. However, this never comes into effect because the first council elected under these terms rejects it. The council says it only has control over minor municipal matters, too little access to revenues and funding and the administrator retains a power of veto.

1965
H.S.Newbery legally challenges Australia's right to legislate for Norfolk Island, arguing that the repeal of Norfolk Island laws in 1896 was invalid. The case is lost.

1975-6
The Nimmo Royal Commission makes a recommendation that the Commonwealth of Australia either abandons Norfolk Island, or that it be brought under Australia for electoral, social security or taxation purposes, and that all Commonwealth law should apply.

1977
The Norfolk Island Advisory Council and community groups vigorously oppose the Nimmo Report. An appeal to the United Nations is promulgated but not processed.

1979
The Australian government announces it is prepared to move over a period of time towards a substantial measure of self-government for the Island. It is also of the view that, although Norfolk Island is part of Australia, and would remain so, this does not require Norfolk Island to be regulated by the same laws as other parts of Australia.

In May 1979, the Commonwealth Norfolk Island Act of 1978 receives Vice-Regal Assent.

A nine-Member Legislative Assembly is established, with the role of administrator remaining mainly to deal with Australia's interests and areas in which it currently retains interest and control.

The transfer of powers does not, however, proceed according to the timetable initially proposed.

1999
In the 1999 response of the Norfolk Island government to the Australian House of Representatives Standing Committee on Legal and Constitutional Affairs, it is said:

"The Government is of the view that any significant change to the nature of the island's relationship with Australia should be preceded by:

- Proper community consultation;
- A Constitutional Convention;
- and a series of referenda.

The government of the day states in confidence that the result of this process would be a near-universal adoption of the position that the island should stand in the same relationship to Australia as do the Channel Islands with respect to the United Kingdom.

2004
In March, against the wishes of the Norfolk Island Legislative Assembly, Australia passes a law to provide that only Australian citizens can vote in or stand for elections for the Legislative Assembly. This disenfranchises many long-term permanent residents, including a number who are of Bounty and Pitcairn descent.

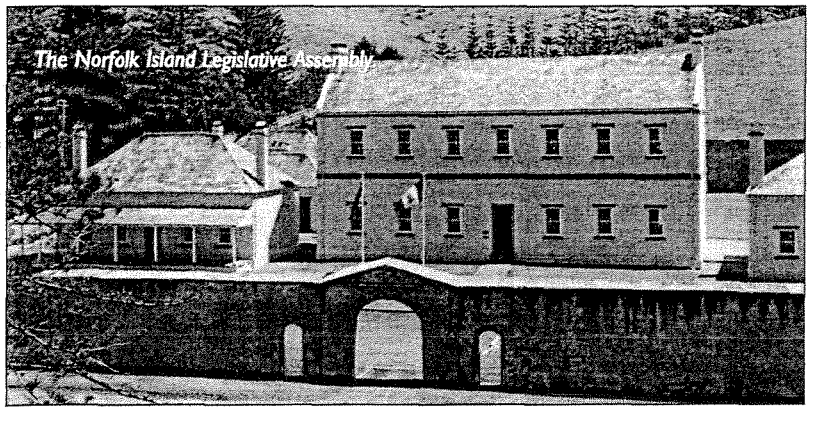
In August, there is a ceremonial sitting of the Legislative Assembly to mark 25 years of self-government.

2006
In February, the federal Minister with responsibility for Norfolk Island announces the Australian government's intention to develop and consult on two broad options for the future governance of the island. The options are:

- A modified self-government model with greater powers for the Australian government to be involved, than currently exists; or
- A local government model where the Australian government might assume responsibility for state-type functions.

The Minister suggests that these models are likely to involve all Commonwealth laws being extended to Norfolk Island. The Australian government's preferred governance model includes Norfolk Island being part of an appropriate mainland electorate for federal elections and referenda. The Australian government advises its intention to take responsibility for immigration, customs and quarantine.

In December, the Minister visits the island and announces that plans for governance changes have been abandoned. No reason is given. Requests for the results of an economic impact survey on the proposed governance changes have been refused to this day.


The Norfolk Island Legislative Assembly

2008 – The latest developments
23 October
The current federal Minister with responsibility for Norfolk Island, Hon. Bob Debus, makes an announcement about governance on Norfolk Island in the Australian Parliament. This announcement is made without any prior notice to the Norfolk Island government.

His stated intention was "securing the future of Norfolk Island as a sustainable, just and equal part of

Australia into the 21st century". He said that Australia was obliged to uphold the principles of political stability and economic prosperity that Australia was working to establish in many countries in the Pacific.

The Minister also alleges that "Australian citizens on Norfolk Island do not receive all the benefits and protections enjoyed by other Australians, nor do they have the same obligations".

decided that no governance changes should be made. This was based on a full economic analysis by Treasury and the Department of Finance, an independent econometric study by respected consultants Econtech (now a division of KPMG) and several reports commissioned by the Commonwealth of Australia government itself. Mr Nobbs said, "We intend to take every opportunity during the brief visit by Minister Debus in the next few days to engage in detailed discussions with him on the best ways for the Australian and Norfolk Island governments to work together in the interests of the welfare of all the people of Norfolk Island."

tions. The first occurred when the whole population agreed to the transfer from Pitcairn to Norfolk Island, only to find that the commitment that had been made to them that the island would be given to them for their exclusive occupation was not to be honoured. The second occasion was in 1979, when the Norfolk Island Act granted self-government, and appeared finally to promise certainty and the opportunity to govern according to the special needs and aspirations of the Norfolk Island people.

Now it appears that the federal government of Australia wishes to renege on this process also.

Norfolk Islanders recognize that being a territory under the Commonwealth of Australia, and the fact that we were given Australian citizenship (both actions taken without consultation) gives us a close relationship with Australia, and the opportunity to work co-operatively.

Nevertheless, the people of Norfolk Island to this day remain firmly convinced of our democratic right to govern themselves according to our own laws and customs. We trust that, in our discussions with Australia over this issue, justice and fairness will prevail, with a positive outcome for the rights and well being of the Norfolk Island people.

The Members and clerks of the 12th Assembly.

24 October

In a government press release, Norfolk Island's Chief Minister Hon. Andre Nobbs responds to the federal Minister's announcement as follows:

"On the eve of his first visit to Norfolk Island as Minister, Mr Debus has made a series of flawed judgments about Norfolk Island's financial status and the quality of our government services and programmes, without prior consultation with its elected government", Mr Nobbs said. "Norfolk Island has unique economic, social and political structures which have worked well for almost 30 years, making us a success story among Australia's external territories and our South Pacific island neighbours". The Chief Minister pointed out that it was less than two years since the Commonwealth completed a year-long examination of Norfolk Island governance, following which federal cabinet

25 October 2008

Mr Debus meets with Members of the Legislative Assembly of Norfolk Island. So commences yet another round of discussions with the Commonwealth of Australia on the future destiny of Norfolk.

It is worth noting

The people of Norfolk Island have, over their 220-year history, undergone changes not only to their geographical home, but many changes to their legal and constitutional status. Most of these changes have been imposed on them by outsiders, without consultation or consent, and often without their knowledge.

There are two notable excep-

10.

A Commonwealth Principle

Democracy at risk?

Ms Robin-Eleanor Adams, JP, *in Kingston.*

Just over a quarter of a century of self-government have taken Norfolk Island from a hopeful new democracy to one facing its demise.

Ms Adams is the Clerk to the Legislative Assembly of Norfolk Island.

In Singapore in 1971 Commonwealth Heads of government, agreed to a Declaration of Commonwealth Principles. In acknowledgement that those principles have stood the test of time, Commonwealth Heads of Government meeting in Zimbabwe in 1991 reaffirmed them in the Harare Commonwealth Declaration.

On 30 May 1979 the Governor-General of the Commonwealth of Australia assented to the Norfolk Island Act 1979. The preamble to that Act states:

> AND WHEREAS the residents of Norfolk Island include descendants of the settlers from Pitcairn Island:
> AND WHEREAS the Parliament recognizes the special relationship of the said descendants with Norfolk Island and their desire to preserve their traditions and culture:
> AND WHEREAS the Parliament considers it to be desirable and to be the wish of the people of Norfolk Island that Norfolk Island achieve, over a period of time, internal self-government as a territory under the authority of the Commonwealth and, to that end, to provide, among other things, for the establishment of a representative Legislative Assembly and of other separate political and administrative institutions on Norfolk Island.

In enacting this legislation, the Commonwealth of Australia honoured its commitment to one of the basic Commonwealth Principles, namely that which states:

> We believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives.

On 10 August 1979, the Norfolk Island people paused in what they were doing and tuned into their local radios as history was being made in the Old Military Barracks at Kingston where the first Norfolk Island Legislative Assembly was inaugurated under the provisions of the Norfolk Island Act 1979 of the Commonwealth of Australia. A number of Australian dignitaries came as the island's guests to witness this historic event. The Governor-General of Australia, Sir Zelman Cowan, opened the Assembly and Hon. R.J. Ellicott, QC, the federal Minister for Home Affairs,

The Great Seal of Norfolk Island.

and Right Hon. Sir Billy Snedden, the Speaker of the House of Representatives, made stirring speeches. The President of the Senate, Sir Condor Laucke, joined Mr Snedden in presenting a clock and hourglass to commemorate the occasion. Nine Members were sworn in and a President and Deputy President of the Assembly were elected; they went on to become the Chief Minister and Deputy Chief Minister, thereby forming the first Norfolk Island government.

The *Hansard* of that inaugural meeting records the views of the Commonwealth of Australia in respect of Norfolk Island at that time. Some are worthy of recalling. Sir Zelman Cowan quoted Mr Ellicott when the Minister had visited the island the previous year:

> The government recognizes the special situation of Norfolk Island, including the special relationship of the Pitcairn descendants with the island, its traditions and culture. It is prepared, over a period, to move towards a substantial measure of self-government for the island. It is also of the view that although Norfolk Island is part of Australia – and will remain so – this does not require Norfolk Island to be regulated by the same laws as regulate other parts of Australia.

Legislating for Norfolk Island by Islanders.

He went on to record that when the Norfolk Island Bill was introduced into the Australia Parliament in 1979 Mr Ellicott stressed the special concern for the structure of the island's economy, its historical background and its way of life, which have in a number of important respects, preserved the tradition of the Pitcairn Islanders.

Twenty-five years later, when the Legislative Assembly of Norfolk Island conducted a ceremonial sitting to mark the 25th Anniversary of the Legislative Assembly. Mr Ellicott and Hon. Jim Lloyd, the Australian Minister for Local government, Territories and Roads, were invitated to address the Assembly.

Mr Ellicott reflected on the processes leading up to the introduction of self-government for Norfolk Island and offered congratulations on what has been achieved by the island in the past 25 years. He went on to record for posterity the basic principles of self-government, which are essential to its advancement in Norfolk Island.

Mr Lloyd acknowledged the 25 years of self-government, recording the uniqueness of the level of self-government provided to Norfolk Island and the range of powers and functions entrusted to the Legislative Assembly – local, state and federal powers – and complimented the successive Legislative Assemblies in developing a significant body of law along with the ability to deal with the breadth of issues over which they had carriage.

Less than two years later, in February 2006, the Norfolk Island community was therefore stunned when Mr Lloyd again visited the island and announced, without prior warning that:

> The [Australian] government's intention is to develop and consult on two broad options for the future governance of the island.
> The first of these options is a "modified self-government model' with greater powers for the Australian government to be involved, than currently exist.
> The second option is a "local government model" where the Australian government might assume responsibility for state-type functions. These models are likely to involve all Commonwealth laws being extended to Norfolk Island unless there is a specific reason for not doing so in particular cases....the Australian government's preferred governance model includes Norfolk Island being part of an appropriate mainland electorate for federal elections and referenda....The Australian government has decided to take responsibility for immigration, customs and quarantine.

It can be argued that where there is significant and overwhelming change proposed to a system of governance, it is appropriate that a binding plebiscite or referendum should be held. The Commonwealth Principle that it is the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives supports this argument.

The view has been expressed that the unilateral decision by the Commonwealth of Australia to change Norfolk Island's form of governance without prior referral to plebiscite or referendum is in direct contradiction to this principle, one that Norfolk Island has consistently demonstrated it supports through active use of the referendum process. For example, under the Referendum Act 1964 (Norfolk Island)

12.

between 1979 and 2002 there have been five citizen-initiated referenda and nine government-initiated referenda conducted in this small community of 2,000 people.

The future of parliamentary democracy has for many years been prominent on the agenda of the Commonwealth Parliamentary Association (CPA), of which Norfolk Island has been an active member since 1981. In 2001 the CPA in conjunction with Athabasca University, published the CPA Learning System for Professional Development – Module on Parliamentary Democracy. This publication gives an in depth overview of the future of parliamentary democracy and the increasing push by citizens for a local voice, a trend that is manifesting in demands for direct democracy initiatives such as referenda, plebiscites and recall.

Historically, from 1856 to the present day the Norfolk Island community (the third settlement) has been a mix of Pitcairn descendants, Australians, New Zealanders and British with a sprinkling of Americans and Europeans.

When Norfolk Island began its journey to full internal self-government, it is interesting to note the changes since 1856 that have taken place on the island's electoral front with regard to eligibility to vote. Prior to 1897, there was no citizenship requirement for voting. From 1897 to 1925, only those natural born or naturalized subjects of the Queen or King were eligible. Between 1935 and 1964, this was amended to read "natural born or naturalized British subject" and between 1964 to 1979 to read "British subject".

From 1979 to 1985 to be eligible to vote and/or stand for the Legislative Assembly one was required to be an Australian citizen or otherwise have the status of a British subject – Australians, New Zealanders and British were treated alike. Persons who were not British subjects were not eligible for election. At the request of Norfolk Island in 1985 discrimination on the grounds of nationality or citizenship was removed and the eligibility criteria was changed to remove the citizenship requirement; eligibility then became dependent on the length of time a person had resided in Norfolk Island.

In 2004 the Australian Parliament, without referral to plebiscite or referendum for the Norfolk Island people, and against the wishes of the Norfolk Island government, amended the Norfolk Island Act 1979 to remove the ability of persons other than those with Australian citizenship from being included on the electoral roll or standing for elections to the Legislative Assembly, meaning that today again there is discrimination on the grounds of citizenship.

Is democracy at risk? This is the question that will lead history to record why, on 12 April 2006, the government of Norfolk Island, with the unanimous agreement of all Members of the Legislative Assembly, resolved to join in a High Court constitutional challenge against the Commonwealth of Australia in the original jurisdiction of the High Court. To quote Chief Minister Hon. Geoffrey R. Gardner:

> The objective of the proceeding is to uphold the democratic rights of Norfolk Islanders and to protect the progress made toward internal self-government. The litigation aims to ascertain the limits of the Commonwealth's legislative power over Norfolk Island. The proceedings seek a declaration by the High Court that provisions of the Commonwealth's Norfolk Island Amendment Act 2004 are invalid. The provisions which will be argued to be invalid are those which (1) require Australian citizenship as a qualification for new enrolments, and re-enrolments, on the Norfolk Island electoral roll; and (2) require Australian citizenship as a qualification for election to the Norfolk Island Legislative Assembly.

The case will be argued by former Federal Attorney-General, Hon R.J. Ellicott, the architect for self-government for Norfolk Island in 1979.

Notwithstanding Australia's expressed intentions, the Legislative Assembly of Norfolk Island and the Norfolk Island government remain committed to maintaining the vision for the advancement of internal self-government on Norfolk Island as envisaged in 1979. On 19 April 2006 the Assembly unanimously passed the following resolution:

> Whereas ~
> The Seventh Legislative Assembly of Norfolk Island on 18 October 1995 adopted a Vision Statement for the Advancement of Internal Self-government on Norfolk Island; and
> The Impact of Bills and Subordinate Legislation Committee of the Eleventh Legislative Assembly on 15 November 2004 included in its Procedural Guidelines that Norfolk Island legislation should meet the goals of that Vision Statement; and
> Given ~
> That it has been 27 years since Norfolk Island commenced its passage to internal self-government;
> That this process is yet incomplete; and
> That many diverse views and attitudes have been pursued in the island since this process commenced;
> It is timely ~
> For this, the 11th Legislative Assembly, to hereby reaffirm that vision, and give impetus to the following goals in directing the island's future:
> Achieve full internal self-government for the people of Norfolk Island;
> Protect and preserve the island's unique heritage, traditions and culture;
> Sustain the ecology and natural environment of Norfolk Island;
> Maintain and improve where possible an adequate standard of living for all residents of Norfolk Island;
> Promote and maintain industry and employment at a level appropriate to achieve economic self-sufficiency in Norfolk Island recognizing within this process the island's small size and its cultural and ecological sensitivities; and
> Assume primary management responsibility for all public land in Norfolk Island, including the Norfolk Island National Park.

INFORMATION

For the full text of the Norfolk Island Act 1979 go to:
http://www.info.gov.nf/legislation/NorfolkIslandAct1979(Clth)/Norfolk%20Island%20Act%2016%20March%202004.pdf

Attachment 2

DRAFT 18 March 2010

CONSENSUS GOVERNMENT
IN NORFOLK ISLAND

~

GUIDING PRINCIPLES AND PROCESS CONVENTIONS
~ Part A ~

13TH LEGISLATIVE ASSEMBLY

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Consensus Government in Norfolk Island

Guiding Principles

1. Consensus government is not defined by the absence of party politics. It is defined by the ability and willingness of all Members of the Legislative Assembly to work together, within their respective roles, for the collective good of the people of Norfolk Island.

2. Consensus government is a unique combination of the British traditions of ministerial responsibility, cabinet solidarity and legislative accountability and the Islander traditions of open dialogue, inclusive decision-making, accommodation, respect and trust.

3. Open and respectful communication between all Members is the most essential feature of consensus government. While it is impossible to reach unanimous agreement on all issues, the opportunity for all Members to have meaningful input into important decisions is fundamental.

4. Effective communication is a "double-edged sword." For consensus government to work, all Members must agree to respect the confidentiality of information before it is properly made public. Similarly, Members should acknowledge the fact that information was shared in confidence once it has been released.

5. Except under extraordinary circumstances, Members of the Legislative Assembly should be made aware of and have opportunity to discuss significant announcements, changes, consultations or initiatives before they are released to the public or introduced in the Legislative Assembly. Use of the element of surprise is inconsistent with consensus government.

6. The role of the Meeting of Members is fundamental to the effectiveness of consensus government. Meeting of Members provides a venue for all Members to set broad strategic direction for a Legislative Assembly and discuss matters of widespread importance to Norfolk Island as they arise.

7. The Chief Minister (if appointed) and Executive Government are appointed by the Members of the Legislative Assembly to provide overall leadership and direction in accordance with the broad strategic direction set by the Meeting of Members. The Executive Government must have the ability to implement this strategic direction effectively and efficiently but in a way that reflects the concerns of non-executive Members and maintains their support.

8. Unlike a party-based parliamentary system, the non-executive Members are not a "Cabinet in Waiting." Their ultimate goal is to support the Executive Government in implementing the broad strategic direction set by the Meeting of Members.

9. As with all parliamentary systems of government, a healthy level of tension must exist between the Executive Government and non-executive Members. While the ultimate goal of the non-executive Members is not to defeat or discredit the Executive Government, it is their responsibility to review and monitor the leadership and direction of the Executive Government and hold it to account.

10. The attendance and participation of all Members of the Legislative Assembly within their respective roles is essential to the effectiveness of consensus government. Formal sessions of the Legislative Assembly and Meetings of Members, the Executive Government and standing and select committees must be a priority for every Member.

PROCESS CONVENTION

The Role of Meeting of Members

Guiding Principle

The role of the Meeting of Members is fundamental to the effectiveness of consensus government.

Meeting of Members provides a venue for all Members to set broad strategic direction for a Legislative Assembly and discuss matters of widespread importance to Norfolk Island as they arise.

General Protocols

1. Meeting of Members is intended to provide a venue where Members can share their views and build consensus on matters that are highly sensitive in nature or of broad and strategic importance to all Members or the Norfolk Island.

2. Meeting of Members is not a decision-making body. Meeting of Members discussions should not limit or replace debate on the floor of the legislature, in Executive Government or Committees. Nothing in this protocol is intended to limit the rights and privileges normally enjoyed by Executive Government, the House or its Members and Committees.

3. The important role that Meeting of Members plays in consensus government depends upon the ability of every Member to express their views in an honest and forthright fashion. Meeting of Members cannot function without an absolute guarantee of confidentiality. No Member other than the Speaker or the Deputy Speaker, when specifically authorized to do so, should comment upon or release information about matters discussed in Meeting of Members.

4. Whenever possible, Meeting of Members direction should be determined through consensus. In those cases where no clear consensus emerges, a vote may be taken. The results of votes are determined by the Chair and are not recorded.

5. Meeting of Members is not intended to replace the formal roles and responsibilities of the House, the Speaker, Ministers, Executive Government or Committees. Nothing in this protocol should be seen as limiting these roles and responsibilities.

Roles and Responsibilities in the Meeting of Members

1. The Speaker (the Chair) and Deputy Speaker (the Deputy Chair) are the Chairpersons of the Meeting of Members.

2. The Chair or in the absence of the Chair, the Deputy Chair, is responsible for calling meetings of the Meeting of Members, approving and distributing draft agendas and supporting materials and maintaining order and decorum in meetings. When clearly and specifically authorized to do so, the Chair and Deputy Chair may speak publicly on behalf of Meeting of Members.

3. All Members serve as equal members of Meeting of Members and are encouraged to participate in discussions free from Executive Government or Committee solidarity. Reference to Members by titles held outside the Meeting of Members is discouraged. On rare occasions, Members may be expected to speak to a matter in an official role held outside the Meeting of Members.

Meeting of Members

1. Meeting of Members is held weekly and takes place in the Committee Room.

2. The Chair or in the absence of the Chair, after consulting with all Members, may call a special meeting of Meeting of Members at any time after consulting with as many Members as possible.

3. Quorum for a Meeting of Members is a majority of Members. A Meeting of Members may not commence until a quorum is established. Once a quorum has been established, the meeting is not terminated by the subsequent loss of quorum unless the attention of the Chair is drawn to such loss of quorum.

4. The attendance of all Members at Meeting of Members is essential to the effectiveness of consensus government. Attendance at regular and special Meeting of Members meetings must be a priority for every Member.

5. Meeting of Members are minuted and agendas and supporting information are confidential as is correspondence from the Chair or Secretary to a Meeting of Members.

Mandate of Meeting of Members

1. Establishing, evaluating and promoting the Principles of Consensus Government and the consensus government protocols

2. . Orientation of a newly elected Legislative Assembly.
3. Setting and evaluating the implementation of a vision and goals for a Legislative Assembly
4. Emergency or strategic issues of immediate concern to all Members
5. Political evolution of Norfolk Island
6. Members' Code of Conduct and disciplinary matters
7. Appointment of key House appointments
8. Meetings with senior elected federal, State and Territorial officials
9. Legislation affecting Members directly
10. House planning and scheduling

Draft of 18 March 2010

Attachment 3

Extract from hansard of the

CEREMONIAL SITTING TO MARK THE OCCASION OF THE 25TH ANNIVERSARY OF THE NORFOLK ISLAND LEGISLATIVE ASSEMBLY

18 August 2004

MR ELLICOTT Mr Speaker, Mr Administrator, Chief Minister and my fellow guests Minister, Honourable Members and guests. Thank you very much for inviting Colleen and myself back to Norfolk Island. I can only say that we feel very much at home. We were delighted to come and we just want to say a very sincere thank you to all of you. I would also like to thank our friends, David and Margaret Buffett for the way they've cared for us and looked after us since we set foot on Norfolk Island a few days ago. People often ask me why did you leave politics or more particularly, what do you enjoy about politics, what did you get out of it? I may have been a bit hyper active, I'm not sure but I got a tremendous amount out of politics. There were lots of things that happened whilst I was a Minister in various roles. I was Minister for Sport and I had the privilege of setting up the Australian Institute of Sport and as I listen to the Olympics I get great joy out of that. Coming here to Norfolk Island and seeing what has happened has brought a similar feeling of pride in what you've been doing. It is absolutely clear that self Government has been a great success both the spirit of the island and the prosperity of the island are testimony to that fact, so congratulations on what you've done in the last twenty-five years. the process by which self Government came about was not overly big. It occupied several visits on my part to the island, but I had a group of people who were committed to it. You might remember Bill McCasker, the Senior Officer who came with me who was committed to the task of self Government. He is now deceased. But we had that wonderful Administrator Des O'Leary. Now he may have been one of Australia's major spy's at the time, but actually he was a wonderful person in himself. He had a great sense of humour but more than that he understood people but he had the capacity to handle a group of men as they were at that time and with a certain degree of seriousness, but at the same time humour, we set about the task and after those few visits we set the course for self Government in Norfolk Island. It took discussion, deliberation, drafts and re-drafts. We had Mr Ewens the former Parliamentary Counsel helping us with the task, we drew heavily on the self Government of the Northern Territory. If you would like to compare the two Acts you will find a degree of similarity in relation to the establishment of a Westminster system in this place and in the end we came up with a solution that we thought was very suitable to the island. I think it's as well to mention the people who were concerned. Some of them are no longer with us but some of them are. Bill Blucher, you Mr Speaker, Greg Quintal, Bruce MacKenzie, who is now deceased, Lisle Snell, Duncan McIntyre, Geoff Bennett and Brian Nunn who I understand is now deceased. They were all people who were committed and it was immensely important the contribution they made. I thought it might be a moment to reflect on the basic principles of self Government to as it were go back to the beginning and set down what those basic tenets were because they are pretty important. At the very threshold was this proposition that under the Commonwealth Constitution the Commonwealth Parliament has Plenary power for the Government of this Territory and that means not only that it regards this Territory as part of Australia but it has not only the power but it has the responsibility of the welfare of Norfolk Island. If there was some massive cyclone that descended on this island you would find the Australian Government and the rest of the Australian people here. That is a basic proposition in self Government.

The second one has already been mentioned and that is that the Pitcairners and their descendents have a very special relationship with this island. Now that special relationship with the land of Australia is shared by only a minor number of Australians. The Aboriginal people, the Torres Straight Islanders, the people of Cocos Island, they all have special relationships with the land where they live. That is not so of all Australians.

On the 24th June 1856 this place was set aside as a separate and distinct settlement and the laws and customs of the Pitcairners were to be preserved and maintained in this place and that's basic to an understanding of self Government on Norfolk Island and your Chief Minister has just mentioned it.

A third proposition that lay behind it was that over a long period successive Governments had allowed other people to come and live on this island and treat it as their home and they not only came from Australia but they came from the United Kingdom, New Zealand and other parts and they were allowed to stay here, invest here and live here and bring up their families here. That was an important part of self Government and they shared the island with those of Pitcairn descent. The next principle that I think you readily recognize is that the Pitcairn heritage and culture has to be preserved. It is part of this island's history, it is part of you and its obviously being done but it's a basic plank of self Government. I went the other day to see cyclorama. It was an amazing experience to go back to the beginning and go through it and see what had happened. I come onto another principle which is a little bit controversial I suspect and that is that all the people of responsible age who are committed to reside here whether of Pitcairn descent or not, they be entitled to vote and be elected to the Legislative Assembly. The Minister won't mind me mentioning what is a jarring note but I think we have to acknowledge it. I have to say that was a basic plank of self Government in 1979.

The recently applied Australian citizen requirements for voting and election to this Legislative Assembly are antipathetic to the fundamentals of Norfolk Island's self Government. I can't call something what it isn't what it is or vice versa! That seems to me to be clear. It may have been that in Roman times Quis Romanus sum, or I am a Roman citizen, was a complete solution to being a free person in the Roman empire because the only alternative seemed to be slavery but Quis Australianus sum is not a complete answer to Norfolk Island's self Government and there is a jarring note and we need to recognize it. I think that that's enough said but I wanted to make the point and I couldn't adequately describe all those things without referring to that. Something very important I wanted to mention is that you would notice that when self Government came you had proportional voting and the purpose of that was to underlie one fact and that was that this island can only operate by consensus. Now I understand Mr Brown Chief Minister, calls himself the leader of the Opposition and there's a sense of humour in that I'm sure because he probably knows and you probably know that at the end of the day you have to reach agreement around this table and I suspect that's the basis upon which you all face the task. There can be no room for personal animosities or attitudes that are diverse except in so far as they relate to the best interest Norfolk Island. Unless they do well they have no part in what a small number of people are trying to do for a relatively small number of constituents out there and so far as that's concerned whatever electoral system you choose, whether it's first past the post or the present system you've got that comes from Illinois or where-ever it came from or whether you choose the Hare Clark system from Tasmania I say to you it doesn't matter which, at the end of the day whoever sits around this table has to get to a decision by consensus and that was a basic platform of self Government. It's also true to say that self Government was a process and the Chief Minister has described that and it's a great testimony to the willingness of the Australian parliament to evince confidence in the people of Norfolk Island and in this Legislative Assembly. They are very constant and great enquirers into what people do. There are many Members and many senators who are interested in what is happening around the country and that includes Norfolk Island and they subjected you to considerable scrutiny. You will not always agree with them. They too think they are acting in the interests of Norfolk Island but they have in their wisdom in my view, increased your power and that power has been very significant. One thing that you might have thought was a right or a privilege, certainly you didn't want it, we've got it, the Minister and I have it, we have to live with it and that's Commonwealth taxation. You've not been subjected to it and nor have you been subjected, if you see it as a subjection, nor have you the rights to social service or the requirements of deductions of superannuation and all the rest of it which are either shared or inflicted on other Australians but that came at a price and that price was to recognize something out of the Pitcairn heritage and that is that you would look after anybody in need and that was basic to self Government. It wasn't just a throw away line with a sense of emotion but that anybody who was in need in this place you would look after them. Not in some patronizing sort of way but through some system would enable people to come with dignity and obtain benefits if they fell into need and that was an essential part of it. We sand the Pitcairn anthem this morning and I've no need to read to you that centre verse, I was enhungered and you gave me meat, but it lies at the basis of that plank and it is one of the most important. Mr Speaker thank you for inviting us. Thank you for allowing us to share this moment. It's a great moment for Norfolk Island. It's a great moment for me and I'm sure it's a great moment for the Minister"

Attachment 4

GOVERNANCE AND DEMOCRACY – NORFOLK ISLAND STYLE (1979-2010)

Did you know...?

Norfolk Island has a hybrid system of representative government; it is a mix of Westminster, Consensus and Direct Democracy. People exposed to an adversarial system of government, such as used in Australia and New Zealand, can find ours hard to fully understand. From time to time it is evident there can also be confusion on a local level. This may be due to the fact there is no single comprehensive, clear and concise publication that clearly documents how democracy operates through our Assembly on Norfolk Island. The Canadian Northwest Territories legislature, which also operates with consensus government, has recently published their version of this document titled, "Guiding Principles and Convention Processes". Like the Canadian Northwest Territories legislature our Assembly should recognise the value of this exercise. Production of our own document could be used by people locally and abroad trying to come to grips with our hybrid system of democracy, reducing confusion and the risk of incorrect assumptions.

Until then, I have provided below some interesting background for your consideration coming into this election:

1. Direct democracy means the right of all citizens to directly vote on political issues. It can be exercised in several ways but in Norfolk Island it is exercised through a referendum or an initiative under the Referendum Act 1964. In a community of our size with only 1100 voters the referendum process can work with relative ease. Citizen initiated referenda are *not* available in the Australian States and Territories at this time. Norfolk Island has since 1979 used the citizen initiated referendum process on a number of occasions – for example, in 2002 on mobile phones and in 2001 when the Administrator was asked to dissolve the Legislative Assembly. In all, there have been 14 referendums held since the granting of self-government in 1979. The referendum, which coincides with the 2010 Legislative Assembly election, will be the eighth citizen-initiated referendum in Norfolk Island.

2. Unlike in the Australian Commonwealth, State and Territory parliaments, in our small community you, the elector, know who you are voting for because the candidates have lived in our community for at least five years and you can make a real choice whether the members you vote for are worthy of your vote. As a member of the Norfolk Island community, even if you are not eligible to vote, you can still speak to a member of the Assembly and voice your opinion.

3. Your elected representatives, the members of the Legislative Assembly, can vote according to their conscience on every issue unlike parliaments with adversarial government. Your voice on Norfolk can really count. All members have a deliberative vote only, including the Speaker.

4. The nine members of your Assembly decide by majority vote who will be the Speaker and the Deputy Speaker. The Speaker, and in his absence, the Deputy Speaker, presides over meetings of the Assembly and is the spokesperson for the Legislative Assembly. The Speaker's powers, functions and duties are constitutional, traditional and ceremonial, statutory, procedural and administrative.

5. The nine members also determine by majority vote the number of ministers of the government to be appointed and make recommendation to the Administrator who those Ministers are to be. And of equal importance, the Members of the Assembly can by majority vote determine whether the Administrator should remove a Minister from office if the Members are unhappy with the performance of the Minister.

6. The number of Ministers has varied from one Assembly to the next, ranging from two through to even six in one Assembly. Some would view a ministry of six out of nine members as being inappropriate. That is not necessarily the case on Norfolk because of the fact that we have collegiate government, not cabinet solidarity, due mainly to the fact that members of the Assembly stand as independents. In fact it is not uncommon during question time for a Minister to ask a question of another Minister or to vote against another Minister. This practice is consistent with consensus government.

7. The members of your Assembly by majority vote generally determine the portfolios for which each of the government ministers are to be responsible. The following Assemblies have had a Chief Minister - the 1st, 3rd and the 8th through to the 12th. Up until and including the 8th Assembly it was not uncommon for a Minister of the Government, and in fact on occasion the Chief Minister, to also be the Speaker of the Legislative Assembly. Historically he or she is usually, but not always, the member who has polled the highest number of votes.

.....to be concluded next week

Attachment 5

GOVERNANCE AND DEMOCRACY – NORFOLK ISLAND STYLE (1979-2010)
Did you know?

Continued from 6 March 2010

Last week we covered some of the differences in how the Legislative Assembly of Norfolk Island operates compared to parliaments with an adversarial system of government. This week we will conclude with further highlights and "nuances" of our hybrid democracy by quoting from the Guiding Principles and Process Conventions Manual in the Canadian Northwest Territories Parliament which mirror how our Assembly does business. The following eight principles are just a small part of their 14-page document.

If you substitute "Norfolk Island " for "the Northwest Territories", "Meeting of Members" for "Caucus", "Chief Minister" for "Premier", "Islander" for "aboriginal" and substitute "executive government" for "Cabinet" in the guidelines below you have almost word for word the principles under which our Assembly operates today.
"

1. Consensus government is not defined by the absence of party politics. It is defined by the ability and willingness of all Members of the Legislative Assembly to work together, within their respective roles, for the collective good of the people of the Northwest Territories.
2. Consensus government is a unique combination of the British traditions of ministerial responsibility, cabinet solidarity and legislative accountability and the aboriginal traditions of open dialogue, inclusive decision-making, accommodation, respect and trust.
3. Open and respectful communication between all Members is the most essential feature of consensus government. While it is impossible to reach unanimous agreement on all issues, the opportunity for all Members to have meaningful input into important decisions is fundamental.
4. Effective communication is a "double-edged sword." For consensus government to work, all Members must agree to respect the confidentiality of information before it is properly made public. Similarly, Members should acknowledge the fact that information was shared in confidence once it has been released.
5. Except under extraordinary circumstances, Members of the Legislative Assembly should be made aware of and have opportunity to discuss significant announcements, changes, consultations or initiatives before they are released to the public or introduced in the Legislative Assembly. Use of the element of surprise is inconsistent with consensus government.
6. The role of the Caucus is fundamental to the effectiveness of consensus government. Caucus provides a venue for all Members to set broad strategic direction for a Legislative Assembly and discuss matters of widespread importance to the Northwest Territories as they arise.
7. The Premier and Cabinet are appointed by the Members of the Legislative Assembly to provide overall leadership and direction in accordance with the broad strategic direction set by the Caucus. Cabinet must have the ability to implement this strategic direction effectively and efficiently but in a way that reflects the concerns of Regular Members and maintains their support.
8. Unlike a party-based parliamentary system, the Regular Members are not a "Cabinet in Waiting." Their ultimate goal is to support Cabinet in implementing the broad strategic direction set by the Caucus."

However, the degree of co-operation between the executive government and the non-executive members has varied from one Assembly to the next. The executive government in the Second Assembly for example allowed non-executive members to sit in and observe formal meetings of the executives. Others have excluded them. From time to time you hear a reference to "back benchers" in the Assembly; that is a term more applicable to a parliament operating in a party system. In our Assembly the appropriate term is "non executive member".

In January 2009 Norfolk Island hosted the biennial meeting of Australasian Clerks of Parliament and two items of interest to Norfolk were discussed. The first was the possibility of the Norfolk Island Assembly following emerging practice in a number of the Australian States and Territories to include words in their Standing Orders, after Prayers that acknowledge the traditional landowners on which the Parliament sits. Discussion then flowed on the possibility of our Standing Orders being amended to acknowledge at the conclusion of Prayers the Foremothers and Forefathers from Pitcairn Island who settled on Norfolk Island in 1856. The idea is certainly worth exploring.

The second item of interest was an acknowledgement from one of the overseas Clerks that our Assembly, because of its smallness, and the comparative smallness of the population, could be viewed as a perfect balance between the Pacific parliaments and the Australian Parliaments – almost a showpiece of democracy working as it was intended!

May the above and last week's contribution be helpful to you in understanding Governance and Democracy – Norfolk Island style.